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STATUTORY INSTRUMENTS

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**1975 No. 488 (L. 7)**

**MAGISTRATES' COURTS**

**PROCEDURE**

**The Magistrates' Courts (Recovery  
Abroad of Maintenance) Rules 1975**

<i>Made</i>	- - - -	<i>21st March 1975</i>
<i>Laid before Parliament</i>		<i>24th March 1975</i>
<i>Coming into Operation</i>		<i>12th April 1975</i>

The Lord Chancellor, in exercise of the power conferred on him by section 15 of the Justices of the Peace Act 1949, as extended by section 122 of the Magistrates' Courts Act 1952, section 5(1) of the Justices of the Peace Act 1968 and sections 27(8) to (10), 32(1) to (3), (6) and (8), 33(4) and (5), 35(4) and 38(2) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, after consultation with the Rule Committee appointed under the said section 15, hereby makes the following Rules:—

**1.** These Rules may be cited as the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975 and shall come into operation on 12th April 1975.

**2.—(1)** In these Rules, unless the context otherwise requires—

“the Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972; and

“his register”, in relation to a justices' clerk, means the register kept by that clerk in pursuance of rule 54 of the Magistrates' Courts Rules 1968(1).

(2) The Interpretation Act 1889 shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

**3.** The officer of any court, by or in relation to whom anything is to be done in pursuance of any provision of Part II of the Act, shall, where that court is a magistrates' court, be the justices' clerk.

**4.** Where a magistrates' court dismisses a complaint under section 27 of the Act (application for recovery of maintenance), or a complaint by a person in a convention country for the variation of a registered order, the justices' clerk shall send written notice of the court's decision to the Secretary of State and any such notice shall include a statement of the justices' reasons for their decision.

5.—(1) Where a magistrates' court makes an order which is required under section 27(8) of the Act to be registered, the justices' clerk shall enter and sign a minute or memorandum of the order in his register.

(2) Where a justices' clerk in pursuance of section 32(2) or (3) of the Act (transfer of orders), receives a certified copy of an order, he shall cause the order to be registered in his court by means of a minute or memorandum entered and signed by him in his register.

(3) Every minute or memorandum entered in pursuance of paragraph (1) or (2) above shall specify the section and subsection of the Act under which the order in question is registered.

6.—(1) Where a justices' clerk registers an order in pursuance of section 27(8) or 32(2) or (3) of the Act, he shall send written notice to the Secretary of State that the order has been duly registered.

(2) Where a justices' clerk is required by section 32(6) of the Act to give notice of the registration of an order he shall do so by sending written notice to the officer specified in that subsection that the order has been duly registered.

7.—(1) Payment of sums due under a registered order shall, while the order is registered in a magistrates' court, be made to the clerk of the registering court during such hours and at such place as that clerk may direct; and a justices' clerk to whom payments are made under this rule shall send those payments by post to such person or authority as the Secretary of State may from time to time direct.

(2) Where it appears to a justices' clerk to whom payments under a registered order are made by virtue of paragraph (1) above that any sums payable under the order are in arrear he may and, if such sums are in arrear to an amount equal to four times the sum payable weekly under the order, he shall, whether the person for whose benefit the payment should have been made requests him to do so or not, proceed in his own name for the recovery of those sums, unless it appears to him that it is unreasonable in the circumstances to do so.

8.—(1) Notice under section 35(4) of the Act (variation of orders by magistrates' courts) of the making of a complaint for the variation or revocation of a registered order and of the time and place appointed for the hearing of the complaint shall be in the form specified in the Schedule to these Rules and shall be sent by post by the justices' clerk to the Secretary of State for onward transmission to the appropriate authority in the convention country in which the defendant is residing.

(2) The time appointed for the hearing of the said complaint shall be not less than six weeks later than the date on which the said notice is sent to the Secretary of State.

9.—(1) Where a magistrates' court receives from the Secretary of State a request under section 38(1) of the Act (taking evidence at request of court in convention country) to take the evidence of any person, that evidence shall be taken in accordance with the provisions of this rule.

(2) Subject to paragraph (3) below—

- (a) the evidence shall be taken in the same manner as if the person concerned were a witness in proceedings on a complaint;
- (b) any oral evidence so taken shall be put into writing and read to the person who gave it, who shall be required to sign the document; and
- (c) the justices by whom the evidence of any person is so taken shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by them.

(3) Where the request referred to in section 38(1) of the Act includes a request that the evidence be taken in a particular manner, the court by which the evidence is taken shall, so far as circumstances permit, comply with that request.

**10.**—(1) Where a justices' clerk receives from the Secretary of State a request under section 38(1) of the Act to take the evidence of any person, that evidence shall be taken in accordance with the provisions of this rule.

(2) Subject to paragraph (3) below—

- (a) the person whose evidence is to be taken shall be examined on oath by or before the justices' clerk;
- (b) any oral evidence shall be put into writing and read to that person who shall be required to sign the document; and
- (c) the justices' clerk shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by him.

(3) Where the request referred to in section 38(1) of the Act includes a request that the evidence be taken in a particular manner the justices' clerk by whom the evidence is taken shall, so far as circumstances permit, comply with that request.

(4) For the purposes of this rule a justices' clerk shall have the like power to administer oaths as has a single justice of the peace.

**11.** Any document such as is mentioned in paragraph (2)(c) of rule 9 or 10 of these Rules shall be sent to the Secretary of State for onward transmission to the appropriate authority in the convention country in which the request referred to in section 38(1) of the Act originated.

Dated 21st March 1975

*Elwyn-Jones, C*

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## SCHEDULE

Rule 8(1)

### FORM OF NOTICE UNDER SECTION 35(4) OF THE MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972

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#### EXPLANATORY NOTE

These Rules make provision, in relation to magistrates' courts, for the various matters which are to be prescribed under Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972, for the giving of notice of things done under that part of the Act and for adapting the procedure on the hearing of a complaint where the hearing is in the absence of the complainant.

In particular, the Rules prescribe the manner in which maintenance orders are to be registered and enforced in magistrates' courts and the manner in which evidence is to be taken at the request of a court in a convention country.